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SUBJECT: NIGERIA: AGOA ELIGIBILITY REVIEW

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[B. 02](#) ABUJA 2803

[C. LAGOS](#) 2023

[D. ABUJA](#) 1113

[¶11.](#) To answer any questions that might arise from the Ref C submission, the Mission provides the following supplementary discussion.

Economic policies: improvement, for the most part

[¶12.](#) President Obasanjo has put in place a highly reputable economic reform team since his April reelection. This team, led by Finance Minister Dr. Ngozi Okonjo-Iweala and Presidential Economic Advisor Dr. Charles Soludo, has reformist credentials. Many observers question, however, whether the President himself can prevail against entrenched interests such as his political allies and the unions. The official GON reform blueprint, called the National Economic Empowerment and Development Strategy (NEEDS), is to be released in November. According to former head of the Bureau of Public Enterprises (BPE) and member of the economic reform team Nasir el-Rufai (now Minister for the Federal Capital Territory), the reform strategy will be painful and will emphasize fiscal discipline. Politically difficult moves will be taken to end fuel subsidies and to reform the public sector.

[¶13.](#) Nigeria continues to make progress toward establishing a market-based economy that protects private property rights and minimizes government interference. Between the beginning of privatization efforts in 1999 and mid September of this year, the GON had privatized twenty-five formerly state-owned enterprises. Unfortunately, the planned privatizations of the National Electric Power Authority (Ref B) and Nigeria Telecommunications Limited appear to have stalled.

[¶14.](#) On the energy side, the GON has announced a deregulation of gasoline prices and plans to privatize the Petroleum Product Marketing Company (PPMC), which buys and sells both domestic and imported fuel and petroleum products. The GON is also considering privatization of its refineries. The complicated tangle of GON officials involved financially in the energy sector will likely make this a daunting task.

Barriers to U.S. trade and investment: mixed signals

[¶15.](#) Progress toward establishing a rules-based open trading system has continued, but not without setbacks. The GON still tends to change tariff rates suddenly and arbitrarily. In March, it once again cut duties on many items (mostly raw materials and capital equipment) and raised them on others (primarily finished goods and agricultural products). A number of imported items - frozen poultry, certain printed fabrics, cassava, ice cream, fruit juice in retail packs, toothpicks, beer and pasta - were all officially banned just before Nigeria's national elections, ostensibly to foster domestic production even though domestic industry cannot meet the demand for these products. And most of these imported items were and are still readily available for reasonable prices in local markets despite the continuing ban, raising rule of law questions about the implementation of trade regulations (see ref D).

[¶16.](#) In August the GON closed its borders with Benin for one week, and the influential chairman of the ruling People's Democratic Party (PDP) as well as other officials have stated on multiple occasions that the GON may close its

borders with other countries. The stated rationale was a crackdown on illicit trade. The impromptu closure evinced the GON's inclination to control trade, as well as its tendency to arbitrary action.

¶ 17. The GON in September passed legislation that appears to bring Nigeria's trade law into compliance with the Act. In particular, the new legislation appears to establish an enforceable visa mechanism to combat transshipment of goods. Such a provision, if found to be in compliance with the Act, would likely render Nigeria eligible for benefits under AGOA provisions for textiles and apparel. (Post has sent copies of the new Nigerian legislation to USTR for review.)

¶ 18. Other than the pre-election bans (and the detrimental effects of an arbitrary tariff policy), the GON has not generally discriminated against U.S. goods or services. Foreign firms in general are allowed to invest in all sectors of the Nigerian economy as long as they have Nigerian partners. Investors who abide by regulations governing the establishment of businesses are, both in law and in practice, assured national treatment.

¶ 19. While foreign exchange can be moved across Nigeria's borders, selected political elites are rumored to benefit greatly from the "illegal" parallel market rates. The introduction last summer of a modified Dutch auction mechanism has gone a long way toward reducing the spread between official and parallel market exchange rates. As President Obasanjo noted in his Independence Day speech October 1, his administration "does not condone such criminal activities as foreign exchange manipulation, under-invoicing and money laundering, which generally compromise our financial system."

¶ 10. The GON is working toward better protection of intellectual property rights (IPR). Nigeria is party to numerous IPR conventions and agreements, and Nigerian law generally favors intellectual property owners and imposes criminal penalties on IPR violators. The GON has introduced legislation to create a quasi-independent IPR commission and to bring Nigeria into full compliance with the WTO TRIPS agreement. Nigeria is a member of WIPO and signatory to several IPR treaties. Despite these legal measures, enforcement remains weak. Scarce resources and a lack of expertise are at least a part of the problem.

Poverty reduction: no results yet

¶ 11. The GON recently unveiled a new economic plan, the National Economic Empowerment and Development Strategy, the details of which have not yet been released. Obasanjo's economic team have outlined strategies for attaining macro-economic stability (with emphasis on low inflation and stable interest and exchange rates), achieving annual GDP growth of 5-7 percent, and reducing poverty. Skeptics, of which there are many, point out, though, that this Strategy follows two other poverty reduction programs in the past four years that made little or no impact on the more than two-thirds of Nigerians living in poverty.

¶ 12. The GON continues to promote the development of private enterprise through its Small and Medium Industries Equity Investment Scheme, under which banks are required to set aside 10 percent of before-tax profits for equity investments in industrial enterprises. 80 banks have reportedly set aside 103 million USD, but only ten percent of the available funds had been invested as of December 2002.

Combating corruption: the jury is still out

¶ 13. Nigeria continues to be considered one of the most corrupt countries in the world, second only to Bangladesh in the most recent Transparency International study. Officials continue to see government service as a path to personal enrichment, and companies continue to report that doing business without paying bribes puts one at a distinct disadvantage.

¶ 14. A federal anti-corruption commission is now in place. The GON awards contracts through an "open tender system" that is beginning to show some transparency. Federally

funded contracts worth over 10,000 USD are legally subject to due diligence. Some observers believe these measures have reduced or will reduce the forms of corruption that most affect foreign trade and investment, but corruption is still rife in the daily life of most Nigerians. In his Independence Day speech October 1, President Obasanjo stated "The (anti-corruption) crusade here will continue until the Nigerian society is rid of this major impediment to our economic prosperity and development, and there will be no sacred cow."

Rule of law and political pluralism: continuing evolution

¶15. Ethnic and religious tensions pose significant challenges to the establishment of rule of law and political pluralism. Communal clashes have resulted in numerous injuries and deaths, and Nigeria's under-funded, under-trained and under-equipped police force is often hard-pressed to stop or prevent violence. The Nigerian military has calmed some particularly violent areas by its presence, but looting and indiscriminate killing (sometimes also committed by other security services and local civilians) have marred its efforts in the past.

¶16. Civil and criminal cases move through Nigeria's courts slowly, in large part as a result of a crippling lack of resources and administrative expertise. Public confidence in the judicial system is low across the country, and has contributed over the past few years to the adoption of Islamic Law (Shari'a) in 12 of Nigeria's northern states.

¶17. Nigeria in April held its second national and state elections since the country returned to civilian rule in 1999. Although 30 parties were allowed to contest (up from three in 1999), the elections were marred by allegations of widespread fraud and questions, from both domestic and international observers. The leading opposition party, the All Nigerian People's Party, filed a lawsuit to have the election victory of President Obasanjo overturned. Although the suit was filed immediately after the election, the Court of Appeals only began hearing substantial arguments on the case in late September. Local elections that were due have still not been held. President Obasanjo's ruling People's Democratic Party (PDP) dominates national and local politics, controlling close to seventy percent of elected positions at all levels of government. Still, the vast majority of Nigerians continue to support democratic practices.

Human rights have made progress

¶18. The GON's human rights record has improved, yet serious problems remain and there is also a lack of accountability for past abuses. The security services have been involved in fewer violations of human rights this year, but they still all too often fail to protect the rule of law in rural areas. Despite pressure from the international community (including Section 557-reduced USG security assistance), the GON has not held accountable those responsible for the October 2001 military killings of over 100 civilians in Zaki-Biam, Benue State.

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